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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Section 257 Proceeding to
Identify and Eliminate
Market Entry Barriers
for Small Business

GN Docket No. 96-113

Comments of NextWave Telecom Inc.

NextWave Telecom Inc. (NextWave) respectfully submits its comments in response to the above-captioned Federal Communication Commission (FCC or Commission) Notice of Inquiry.^{1/} NextWave, through its subsidiary, NextWave Personal Communications, Inc. was a successful bidder for 63 markets in the first FCC Entrepreneur's Block auction and is an active participant in the current Entrepreneur's Block auction through its subsidiary,

^{1/} *In the Matter of Section 257 Proceeding to Identity and Eliminate Market Entry Barriers for Small Business*, Notice of Inquiry, GN Docket No. 96-113, (rel. May 21, 1996) (Notice or NOI).

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NextWave Power Partners, Inc. As an entrepreneurial, small business formed to provide broadband PCS, NextWave has substantial interest in FCC efforts to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services. . . ^{2/}, in particular efforts to eliminate barriers to the provision and ownership of PCS.

The FCC was careful to make clear that it gives no guarantees with its small business policies, only opportunity. Nor is NextWave suggesting that the FCC should be in the business of guaranteeing success. Telecommunications entrepreneurs, as in any other business, succeed on the strength of their business plans and management expertise. However, the Commission should address constraints on successful participation of small, entrepreneurial companies in the wireless industry beyond its initial success with auctions that have ensured small businesses access to spectrum.

I. NextWave Believes that the FCC's Auction Rules Have Opened the Door for New Entrants in the Wireless Industry

Despite many setbacks, the Commission crafted a set of rules for and conducted the recent C block auctions in a manner that has met, in substantial part, the Congressional mandate of "disseminating licenses among a wide variety of applicants."^{3/} The results of that auction, even after defaults, indicate that the Commission achieved many of its objectives. Unlike the A & B block auction, where there was twice as much spectrum and

^{2/} See 47 U.S.C. § 257(a) and Notice at para. 1.

^{3/} See *In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding (Competitive Bidding Proceeding)*, Fifth Report and Order, 9 FCC Rcd 5532 at ¶ 169 (1994) (*Fifth Report and Order*) and 47 U.S.C. §309(j)(3)(B).

one-tenth the number of opening round bidders, the C block auction has shown diversity from the beginning with 254 qualified bidders. Whereas at the end of the A & B block auction there were 18 winning bidders with an average of 26 million pops per bidder, at the end of the C & F block auctions, there will be several times that number of new PCS licensees with an average of no more than 4 to 5 million pops per winning bidder.

Furthermore, the mix of C block winners includes national and regional players and smaller, local players. Through its choice of Basic Trading Areas (BTAs) as the geographic bidding unit and through carefully crafted rules, the Commission was able to generate significant entrepreneurial activity and disseminate widely PCS licenses.

On its face, it would appear that the C block auctions were successful at achieving the Commission's goal to ensure that "at least ten winning bidders enjoy the benefits of the entrepreneurs blocks."^{4/} However, access to spectrum alone is not sufficient to ensure new entry in the wireless industry.

II. The Commission Should Consider Policies to Support Entrepreneurs in Their Efforts to Build PCS Networks

The same competitiveness in the C block auction that ensured that the Commission met its goals of opening the door for new entrants, also tended to raise the bidding levels for C block spectrum. While the FCC's terms in the C block are quite generous, the interest and subsequent competition that the 30 MHz BTA licenses generated ensured that winning bidders would bid through most of the benefits offered by the FCC, and pay the true market value of the spectrum.

^{4/} *Fifth Report and Order* at ¶ 170.

Wireless businesses, in particular broadband PCS, require large amounts of capital to succeed, not just for license acquisition, but for network build out. To truly encourage entrepreneurial, small businesses to participate and, better yet, succeed in this capital-intensive business, it is not enough that the Commission provide access to licenses. It must recognize the fundamental difficulties these companies face in gaining access to capital.

NextWave recognizes that the Commission has offered no guarantees and that entrepreneurial, small businesses ultimately must succeed on the strength of their business plans and management expertise. However, the FCC should recognize the consequences of its rules and actions on small businesses' and entrepreneurs' ability to obtain financing from a variety of sources to build out new PCS networks, including financing both from capital markets and vendors. Furthermore, FCC regulation affects the availability, terms, and conditions of financing. Obviously, regulatory guidelines and certainty are important for small businesses; however, particularly for new ventures, it is equally important that these regulations be framed with an understanding of how they affect the marketability of new entrants.

A. Availability and Cost of Financing is Critical to the Success of PCS Entrepreneurs

While the FCC's auction rules have opened the door for new entrants in the PCS industry and offer entrepreneurs better access to spectrum, these rules do nothing to address the problems faced by small businesses and entrepreneurs when seeking capital to build their networks. For example, once C block participants acquire spectrum, they must build out systems quickly, both to comply with FCC rules, but, more importantly, to reduce the lead

enjoyed by the A and B block licensees. Also because of the cost of licenses and network build out, time to revenue is critical for C block licensees.

Market signals before and during the C block auction provided a sound basis for concluding that PCS entrepreneurs would be able to finance their network build out through the public capital markets. The strong performance of and investor interest in certain new telecommunications issues during that time, including Omnipoint and American Portable Telecommunications, underscored a strong market for such issues. Even after its downturn of this past summer, the market made a steady comeback; however, it remains unclear how much capital will flow into new telecommunications concerns, particularly to C block companies. In general, there are substantial market barriers to startups, which by definition lack a track record and cash flow, seeking large investments. In particular, while the FCC financing terms of C block debt can be viewed as positive for these players, it is evident that investors view FCC priority in retaking a license in the event of default as increasing considerably the risk associated with additional C block investment.

B. The FCC Must Remain Flexible in its Approach to Small Businesses' and Entrepreneurs' Participation in the Wireless Industry

There are a number of ways in which the FCC can remain flexible in its approach to Entrepreneurs' Block licensees and not undermine its underlying policies with regard to small business participation in broadband PCS. The FCC, as the primary holder of C block debt, should be responsive to market conditions and their impact on the financial stability of such licensees. Commission actions should encourage rapid build out of PCS markets and service to the public.

The Commission should consider several steps to promote entrepreneurial PCS service providers through their incubation period:

- Encourage equipment vendor support
- Not require a Treasury note
- Limit the cross-collateralization of licenses
- Permit one-time deferral of interest payments

Equipment Vendor Support -- Particularly for startups in the telecommunications industry, a substantial portion of the company's value is in the license. To balance the lack of revenue and negative cash flow, financial investment, particularly vendor financing, is structured to secure the investment by gaining access to the underlying value of the license. The Entrepreneur's Block rules, as currently structured, make it difficult for potential investors to access the underlying value of the license. As C block licensees enter this next critical phase of network build out, NextWave believes that the Commission should review carefully its rules to ensure that they do not unintentionally discourage vendor financing. For example, there are mechanisms available that recognize the Commission's obligation to pass on licensee qualifications prior to transfers of control, but that may provide comfort to equipment suppliers.

Treasury Notes -- While certain of the C block rules do not facilitate potential investment, C block participants were aware of such rules, and, while difficult, structured their financial deals accordingly. However, other Commission action that directly affects C block investment was not anticipated. In particular, C block licensees were not aware that they would be required to sign a Treasury note. Throughout their participation in the

auction, C block participants anticipated that their essential relationship, both regulatory and financial, would be with the FCC. It was not until after the auction closed that C block participants became aware that they would have to sign a Treasury note and that the government would hold a security interest in the license. The FCC should not require C block licensees to sign Treasury notes. This requirement could affect investors' view of C block risk. In addition to the investment issues the Treasury notes raise, because there was no notice given that licensees would be required to sign such a note, there are significant due process issues involved.

Cross-Collateralization of Licenses -- In addition, NextWave urges the Commission, in cases where a C block participant is unable to pay a portion of its down payment or subsequent installment payments, to clarify that its rules currently treat each license individually and do not cross-collateralize licenses. Current licensing practices permit default on some licenses, but not all, thus offering licensees the opportunity to make good on investment and to offer service to the public.

One-Time Interest Payment Deferral -- Finally, given recent events in the capital markets, and the year-and-a-half headstart enjoyed by A and B block licensees, the FCC should consider a one-time, one-year deferral of interest payments for those C block licensees that request it. This would be structured so as not to result in a loss of funds to the government, but would be critical to C block licenses in their first year of network build out. Furthermore, such Commission action is essential to its goal that C block licensees are operational as soon as possible.

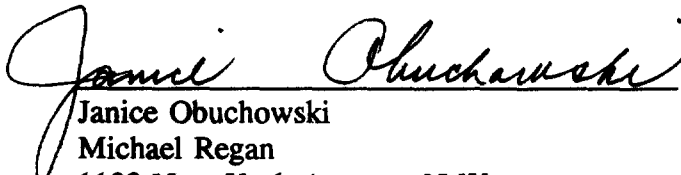
III. Conclusion

The Commission has set down the path of encouraging entrepreneurial, small businesses to participate in broadband PCS. The Commission has successfully provided such businesses access to PCS licenses. However, in order to bring diverse services to the broadband PCS market and the American public, the Commission must continue to be flexible in its approach to small business participation in broadband PCS. We urge the Commission to consider the specific measures mentioned above to encourage capital investment in entrepreneurial, small businesses participating in broadband PCS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kay Hawkins, hereby certify that on the 27th day of September, 1996, a true copy of the foregoing Comments of NextWave Telecom Inc. was hand delivered to the following:

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